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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 FREE RANGE CONTENT, INC., a California
15 corporation, COCONUT ISLAND
16 SOFTWARE, INC., a Hawaii corporation,
17 TAYLOR CHOSE, a Minnesota resident, and
18 MATTHEW SIMPSON, a British Columbia,
19 Canada resident, on behalf of themselves and all
20 others similarly situated,

21 Plaintiffs,

22 v.

23 GOOGLE LLC, a Delaware limited liability
24 company,

25 Defendant.

No. 5:14-cv-02329-BLF

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SERVICE
AWARDS, ATTORNEYS' FEES, AND
COSTS AND EXPENSES**

Date: October 17, 2018
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Dept.: Courtroom 3, 5th Floor

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NOTE FOR MOTION AND MOTION

PLEASE NOTE that on October 17, 2018, at 9:00 a.m., or as soon thereafter as may be heard in the courtroom of the Hon. Beth Labson Freeman, U.S. District Court for the Northern District of California, San Jose Division, plaintiffs Free Range Content, Inc. (FRC), Coconut Island Software, Inc. (CIS), Taylor Chose, and Matthew Simpson, pursuant to Fed. R. Civ. P. 23(h) and the parties' settlement agreement, will and do hereby move for an order:

1. Granting to each of them, as named plaintiffs, a \$5,000 service award;
2. Granting plaintiffs' request for a reasonable attorneys' fee in the sum of \$2.75 million, which is 25% of the gross settlement sum in this matter; and
3. Granting plaintiffs' request for reimbursement of costs and expenses in the sum of \$116,045.

This motion is based on the declaration of each plaintiff; the declarations of their lawyers, including exhibits; the records and files in this matter; the argument below; and oral argument at the upcoming hearing.

I. SUMMARY OF ARGUMENT

Plaintiffs, former publishers in Google LLC's AdSense program who had their unpaid earnings withheld when Google disabled their accounts, move for service awards and reasonable attorneys' fees, costs, and expenses. As plaintiffs will demonstrate, their requests are justified under the facts of this case and applicable law.

II. STATEMENT OF ISSUES TO BE DECIDED

Should the Court grant plaintiffs' request for service awards in the sum of \$5,000 per named plaintiff, reasonable attorneys' fees in the sum of \$2.75 million, and reasonable costs and expenses in the sum of \$116,045?

III. STATEMENT OF RELEVANT FACTS

A. Introduction

FRC filed this suit on May 20, 2014. (Dkt. No. 1.) FRC thought it was wrong for Google, the champion of information, to withhold all unpaid earnings when it terminated publisher accounts for

1 purported breaches of contract, rather than making more granular, evidence-based cuts when and if
2 warranted. Hagens Berman agreed to help.

3 But FRC and its counsel were under no illusion that this case would be easy. FRC and later its
4 co-plaintiffs, CIS, Ms. Chose, and Mr. Simpson, would face one of the world's largest companies.
5 What's more, they would face a litigation opponent that, with the aid of highly skilled counsel,
6 contended with equal vigor that its contracts allowed it to behave as it did, and that its policies and
7 practices were thoroughly lawful and commercially appropriate.

8 So began and continued this dispute. Counsel is proud of their clients for having taken on this
9 battle on behalf of many thousands of former publishers. Through the hard work and dedication of all
10 concerned, the parties were able to reach a settlement that they consider to be reasonable given the law,
11 facts, and circumstances. Because the four plaintiffs stepped up and stayed the course for over four
12 years now, millions of dollars will be paid to publishers who faced the actions of which they complained.

13 **B. Background facts**

14 Google sells Internet advertising via its AdWords program, among others. One way Google
15 arranges for the display of such advertising is via its AdSense program. Google invites owners and
16 operators of web properties to join the AdSense program. If Google approves an application to
17 participate, these persons or companies become AdSense publishers. They can then use their inventory
18 of space to display ads that Google sends to them for that purpose.

19 Participation in AdSense is subject to localized contracts. Members of the proposed Settlement
20 Class entered into terms for the U.S., its territories, or Canada. These contracts were largely identical
21 across localities at any point in time that is pertinent to this case. During the relevant period, there were
22 two contracts in effect: (a) terms and conditions applicable at the inception of the class period, May 20,
23 2010, through April 22, 2013 (earlier-effective contract); and (b) terms of service applicable from April
24 23, 2013, through the present (latter-effective contract). Each of these localized contracts contained
25 California choice-of-law and venue provisions. (*E.g.*, Dkt. No. 92, Exs. A-C.)

26 **C. Plaintiffs' claims**

27 Three of the plaintiffs were AdSense publishers subject to the U.S. AdSense terms, and the
28 fourth, Mr. Simpson, was subject to the localized terms for Canada. (*E.g.*, Dkt. No. 92 ¶¶ 9, 17.) Each

1 displayed ads that Google pushed to their websites. (*E.g., id.* ¶¶ 51, 66, 76, 88.) Google terminated each
 2 of their accounts, allegedly for breach of contract. (*E.g., id.* ¶¶ 58, 70, 74, 79, 86, 91.) None, however,
 3 had done anything knowingly to violate Google’s contract, and all had endeavored to be good and loyal
 4 participants. (*See generally* Dkt. Nos. 214, 215, 216, 217.) In their view, Google’s notices of termination
 5 told them little of substance as to why Google had disabled their accounts. (*E.g., Dkt. No. 92* ¶¶ 58, 70,
 6 79, 91.)

7 All plaintiffs had unpaid amounts in their AdSense accounts at termination, which Google
 8 withheld in their entireties. (*E.g., id.* ¶¶ 61, 72, 81, 94.) Plaintiffs contended that Google maintained a
 9 policy and practice of zeroing-out publisher accounts—*i.e.*, withholding 100% of accrued but unpaid
 10 earnings—on termination for supposed breach of contract. (*E.g., id.* ¶¶ 30, 34.) Plaintiffs contended
 11 that Google’s policy and practice were uniform (though Google contended that in a small number of
 12 instances, it did not zero-out accounts, and that ultimately, it paid certain publishers some or all of their
 13 unpaid amounts). (*E.g., Dkt. No. 193* at 6-7.) Google claimed the contractual right to withhold all such
 14 unpaid amounts. (*E.g., Dkt. No. 94* at 10-13.) Google also repeatedly asserted that it did not keep the
 15 money it withheld—that instead it attempted to credit back to advertisers all amounts for ads displayed
 16 by the terminated publisher over the prior 60 days, including its (Google’s) revenue share. (*E.g., Dkt.*
 17 *No. 193* at 6.) In fact, it asserted that in the aggregate over the proposed litigation class period, it had
 18 credited to advertisers more than the total of what it had allegedly withheld from publishers plus what it
 19 had been paid in connection with those ads. (*Id.*)

20 Plaintiffs challenged Google’s withholding practice on behalf of themselves and similarly situated
 21 former publishers. (*E.g., Dkt. No. 92* ¶¶ 114-185.) Plaintiffs claimed that Google’s actions violated
 22 California law as to liquidated damages and that Google had breached its contracts to pay plaintiffs and
 23 others what was due them for displaying ads. (*E.g., id.* ¶¶ 125-146.) They also claimed that Google’s
 24 actions constituted breach of the implied covenant of good faith and fair dealing, and they asserted that
 25 Google had violated California’s Unfair Competition Law. (*E.g., id.* ¶¶ 147-177.) Finally, plaintiffs
 26 alleged unjust enrichment. (*E.g., id.* ¶¶ 158-163.)

27 **D. Proceedings to-date**

28 Counsel performed much necessary work on behalf of plaintiffs and the proposed class.

1 After much investigation, research, and drafting on the part of its counsel, FRC filed its
2 complaint on May 20, 2014. (Dkt. No. 1.) Google moved to dismiss all of plaintiffs' claims on August
3 20, 2014. (Dkt. No. 21.)

4 Following plaintiffs' amendment of their complaint on September 10, 2014, Dkt. No. 27, Google
5 moved again to dismiss all their claims, with a voluminous request for judicial notice, this time on
6 October 15, 2014, Dkt. Nos. 38-41. Plaintiffs responded. (Dkt. Nos. 43-44.) After a hearing on
7 February 12, 2015, the Court dismissed all of plaintiffs' claims, with leave to amend as to most. (Dkt.
8 Nos. 66, 68.) Plaintiff filed its second amended complaint on March 5, 2014. (Dkt. Nos. 71, 73.)

9 Plaintiffs then moved for leave to file a motion for reconsideration of dismissal of their
10 liquidated-damages-based claim. (Dkt. No. 75.) The Court granted their motion, Dkt. No. 81, and
11 plaintiffs filed their reconsideration motion on April 30, 2015, Dkt. No. 84. After full briefing and a
12 hearing, the Court granted plaintiffs' motion for reconsideration on August 25, 2015. (Dkt. No. 91.)

13 Next, on September 15, 2015, plaintiffs filed their third amended complaint, which included an
14 amended liquidated-damages-based claim. (Dkt. No. 92.) Again Google moved to dismiss, with another
15 request for judicial notice and voluminous supporting papers. (Dkt. No. 94-95.) Plaintiffs and their
16 counsel responded. (Dkt. No. 103.) After full briefing and a hearing on February 19, 2016, Dkt. No.
17 113, the Court on May 13, 2016, granted in part and denied in part Google's motion to dismiss, Dkt. No.
18 116. Google answered plaintiffs' third amended complaint on June 3, 2016. (Dkt. No. 120.)

19 Discovery ensued and continued through (and in some regards past) the date the parties agreed
20 to a settlement-in-principle. (Declaration of Robert F. Lopez in Support of Plaintiffs' Motion for
21 Preliminary Approval (Dkt. No. 246) (Lopez Prelim. Appr. Decl.), ¶ 5.) The parties' efforts included 169
22 requests for production and numerous interrogatories from the plaintiffs; numerous requests for
23 production and interrogatories from Google; the parties' answers, objections, and document production
24 in response to these requests, with Google producing tens of thousands of documents, totaling over
25 96,000 pages, to the plaintiffs, which included myriad details concerning the inner-workings of the
26 AdSense program and Google's fraud-detection practices; depositions of the parties, including a 30(b)(6)
27 deposition of Google for which it produced three designees; consultation with experts and, in
28 connection with plaintiffs' motion for class certification, depositions of each side's consultant; requests

1 for admission from both sides, and their responses; and many, many calls and exchanges to discuss and
2 work-out various discovery-related disputes. (*Id.* ¶ 3.)

3 Following much intensive work on discovery, including the review and analysis of large volumes
4 of highly-detailed, dense, and technical material produced by Google, plaintiffs moved on March 10,
5 2017, for class certification. (Dkt. Nos. 140-172.) Because of the highly confidential designations
6 attached to many of the documents submitted by both sides, motions to seal and follow-up filings were
7 made by both sides.

8 On April 28, 2017, Google opposed plaintiffs' motion for class certification wholeheartedly,
9 including by way of (a) two dense client declarations with many exhibits and (b) a technical expert
10 declaration. (Dkt. Nos. 175-197.) After an extensive reply on June 2, 2017, which included plaintiff
11 declarations and more exhibits, and a hearing on June 15, 2017, Dkt. Nos. 198-204, 209, 213-217, the
12 Court issued its decision granting in part and denying in part plaintiffs' motion, Dkt. Nos. 224, 234.
13 By way of its order, the Court certified a class of certain U.S. publishers. (Dkt. No. 234 (Class Cert.
14 Order) at 33-34.) The question certified was based on plaintiffs' claim for breach of the implied covenant
15 of good faith and fair dealing. (*Id.* at 34.)

16 The parties continued with discovery and prepared for summary judgment and trial, the latter of
17 which was scheduled for March 2018. (Lopez Prelim. Appr. Decl. ¶ 5; Dkt. Nos. 226, 228-231, 115.)

18 **E. The Settlement**

19 **1. Mediation**

20 On May 15, 2017, after Google filed its opposition to plaintiffs' motion for class certification,
21 and following the exchange of mediation letters and voluminous exhibits, the parties engaged in an in-
22 person mediation session with the Hon. Layn Phillips (U.S. Dist. J. Ret.) and his colleague Greg
23 Lindstrom in Newport Beach, California. (Lopez Prelim. Appr. Decl. ¶ 4.) The parties did not settle
24 that day. (*Id.*)

25 After the Court issued its class-certification decision, the parties engaged in further discussions
26 with and via Mr. Lindstrom to ascertain if a settlement could be reached. (*Id.* ¶ 5.) But the plaintiffs and
27 their counsel did not abate discovery and preparations for motions for summary judgment and trial. (*Id.*)

On September 14, 2017, following many exchanges with and through Mr. Lindstrom, including writings by the plaintiffs, the parties agreed to hear a mediator's recommendation. (*Id.* ¶ 6.) After deliberation, the plaintiffs (and Google) accepted this recommendation in principle. (*Id.*)

2. Relief to the Settlement Class

a. Summary of benefits to class members

Plaintiffs' counsel, on behalf of plaintiffs and the proposed settlement class, negotiated and worked with Google's counsel to come to the terms of settlement now before this Court.

The parties' agreement provides for a common fund of \$11 million in non-reversionary monetary relief. (Declaration of Robert F. Lopez in Support of Plaintiffs' Motion for Service Awards, Attorneys' Fees, and Costs and Expenses (Lopez Decl.) Ex. A, ¶¶ 1.44, 2.1-2.2 thereto.) Settlement class members include former publishers subject to Google's localized terms and conditions for the U.S. and Canada. As a result of intense negotiations, the settlement provides benefits even to those publishers who were similarly situated but not covered by the Court's class-certification order.

The settlement agreement provides that proceeds payable to the settlement class are net of: the cost of notice and administration; attorneys' fees, costs, and expenses (if approved); and service awards to the four class representatives. (Lopez Decl. Ex. A, ¶¶ 1.21.) Plaintiffs and their counsel, whom the Court appointed as class counsel for the certified litigation class, and as class counsel for the settlement class provisionally approved by the Court, endorse the value and reasonableness of this proposed settlement. (Lopez Decl. ¶ 2.)

b. Service awards and attorneys' fees, costs, and expenses

The parties also have agreed that plaintiffs may apply for service awards of no more than \$5,000 for each of the four plaintiffs. (Lopez Decl. Ex. A, ¶ 9.2.) As set forth in their supporting declarations, plaintiffs have assisted counsel with the preparation of complaints in this matter; worked with counsel on initial disclosures; consulted with counsel as requested, and on their own initiative, throughout the pendency of this case; monitored the proceedings on their own behalf and on behalf of the putative class; worked with counsel to prepare, review, and submit declarations in support of their claims and those of the proposed settlement class; answered interrogatories and responded to requests for production, including by gathering and producing documents, in consultation with counsel; answered

requests for admission (three of the four); and prepared for and sat for depositions. (*See* Declaration of John Pettitt in Support of Plaintiffs' Motion for Service Awards, Attorneys' Fees, and Costs and Expenses (Pettitt Decl.), ¶ 5; Declaration of Michael Clark in Support of Plaintiffs' Motion for Service Awards, Attorneys' Fees, and Costs and Expenses (Clark Decl.), ¶ 5; Declaration of Taylor Chose in Support of Plaintiffs' Motion for Service Awards, Attorneys' Fees, and Costs and Expenses (Chose Decl.), ¶ 5; Declaration of Matthew Simpson in Support of Plaintiffs' Motion for Service Awards, Attorneys' Fees, and Costs and Expenses (Simpson Decl.), ¶ 5; *see also* Lopez Decl. ¶ 3.) They also have experienced various detriments due to their service, as explained below. (*See* Sec. IV.E, *infra*.)

As for plaintiffs' attorneys' fees, costs, and expenses, the parties addressed the recovery of these following negotiation of the substantive terms of the proposed class settlement. (Lopez Prelim. Appr. Decl. ¶ 16.) The parties then agreed that class counsel could request (and distribute) attorneys fees, costs, and expenses payable from the \$11 million gross settlement fund. (Lopez Decl. Ex. A, ¶ 8.1.)

F. Preliminary approval of the settlement

On April 27, 2018, the Court held a hearing on plaintiffs' motion for preliminary approval of the proposed settlement. At the hearing, the Court asked the parties to consider modifying certain terms of the settlement agreement and notice documents. After conferring, the parties agreed to make the requested modifications and notified the Court that they had done so on May 4, 2018. (Dkt. No. 253.)

Following receipt of the parties' notification, the Court granted preliminary approval on May 7, 2018. (Dkt. No. 254.) The Court also appointed plaintiffs as class representatives for the proposed settlement class and Hagens Berman as class counsel for that proposed class. (*Id.*)

IV. ARGUMENT

The settlement agreement provides that plaintiffs would make their request for service awards, fees, costs, and expenses by motion. (Lopez Decl. Ex. A, ¶ 8.1.) Plaintiffs now request service awards in the amount of \$5,000 per named plaintiffs; a reasonable attorneys' fee at the rate of 25% of the gross settlement fund, or \$2.75 million. *See, e.g.*, Fed. R. Civ. P. 23(h) (permitting such awards when authorized by law or the parties' agreement in certified class actions). They also request reimbursement of costs and expenses in the sum of \$116,045.

1 Plaintiffs make these requests well in advance of the deadline for objections and exclusions,
2 which is September 4, 2018.

3 **A. Applicable standards for attorneys’ fee request**

4 Because this case was brought pursuant to CAFA diversity jurisdiction, and because the
5 underlying contract as well as the settlement agreement contain broad California law provisions (*see* Dkt.
6 No. 92 Exs. A-C, ¶¶ 14, 17, 14, respectively; Lopez Decl. Ex. A, ¶ 10.5), California law applies to
7 plaintiffs’ request for attorneys’ fees. *E.g., Petersen v. CJ Am., Inc.*, 2016 WL 5719823, at *1 (S.D. Cal.
8 Sept. 30, 2016) (citations omitted); *accord, e.g., Ferrington v. McAfee, Inc.*, 2013 WL 12308314, at *2 (N.D.
9 Cal. July 22, 2013).

10 This is a common-fund case. Plaintiffs seek an attorneys’ fee award of 25% of the \$11 million
11 settlement fund, *i.e.*, \$2.75 million. (*See* Lopez Decl. Ex. A, ¶ 8.1 (“Class Counsel will file a motion with
12 the Court seeking a portion of the Settlement Fund as payment of their reasonable attorneys’ fees, as
13 well as reimbursement of actual costs and expenses, including experts and consultants, incurred in
14 connection with prosecuting this Action”)).

15 The California Supreme Court has recently and emphatically clarified that the percentage-of-fund
16 method is an available, venerable, and desirable way under California law to determine fee awards in
17 common-fund cases such as this one. *Laffitte v. Robert Half Int’l Inc.*, 376 P.3d 672, 686 (2016) (“The
18 recognized advantages of the percentage method—including relative ease of calculation, alignment of
19 incentives between counsel and the class, a better approximation of market conditions in a contingency
20 case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily
21 prolonging the litigation . . . —convince us the percentage method is a valuable tool that should not be
22 denied our trial courts.”) (citations omitted).

23 Likewise, in situations where state law does not apply to a fee request, the Ninth Circuit has
24 made plain that district courts have the discretion in common-fund cases “to choose either the
25 percentage-of-the-fund or the lodestar method” for fee awards. *E.g., Vizcaino v. Microsoft Corp.*, 290 F.3d
26 1043, 1047 (9th Cir. 2002); *see also, e.g., Deatrick v. Securitas Sec. Servs. USA, Inc.*, 2016 WL 5394016, at *6
27 (N.D. Cal. Sept. 27, 2016); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *16 (N.D. Cal. Feb. 11, 2016)
28 (“Under the percentage of the fund method, the court may award class counsel a given percentage of the

1 common fund recovered for the class.”) (citing *Fischel v. Equitable Life Assurance Soc’y of the U.S.*, 307 F.3d
2 997, 1007 (9th Cir. 2002)).

3 In fact, the percentage method is especially suitable here, given the easily quantified, non-
4 reversionary common fund provided by the settlement. *See, e.g., Deatrick*, 2016 WL 5394016, at *6
5 (“Despite its primacy, the lodestar method is not necessarily utilized in common fund cases. . . . Because
6 the benefit to the class is easily quantified in common-fund settlements, courts can award attorneys a
7 percentage of the common fund in lieu of the often more time-consuming task of calculating the
8 lodestar.”) (citations and internal quotations omitted); *Destefano*, 2016 WL 537946, at *16 (citations
9 omitted); *Laffitte*, 376 P.3d at 686–87 (approving the use of the percentage method in the “true common
10 fund” case before it).

11 California has no specific, longstanding percentage benchmark like the Ninth Circuit’s. But
12 California courts have recognized that 25% and even percentages considerably above that figure are well
13 within the range of reasonableness. *E.g., Peterson*, 2016 WL 5719823, at *1 (“California has recognized
14 that most fee awards based on either a lodestar or percentage calculation are 33 percent and has
15 endorsed the federal benchmark of 25 percent.”) (citation omitted); *Spann v. J.C. Penney Corp.*, 211 F.
16 Supp. 3d 1244, 1262-63 (S.D. Cal. 2016) (same, and citing additional cases). As for common-fund cases
17 where state law is not the governing authority, the benchmark award is 25 percent of the recovery
18 obtained. *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, at *8 (N.D. Cal. Feb. 24, 2017)
19 (“Applying this calculation method, courts [in the Ninth Circuit] typically calculate 25% of the fund as
20 the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special
21 circumstances’ justifying a departure.”) (citations omitted) (alteration in original).

22 When the percentage-of-fund method is chosen, whether pursuant to California law or Ninth
23 Circuit precedent, the Court may, but is not required to, use a lodestar cross-check to further examine
24 the reasonableness of the requested award. *See, e.g., Laffitte*, 376 P.3d at 687; *Perkins v. LinkedIn Corp.*,
25 2016 WL 613255, at *13 (N.D. Cal. Feb. 16, 2016) (citing *Vizcaino*, 290 F.3d at 1050-51). However, a
26 lodestar cross-check normally does not involve inspecting and scrutinizing each hour attested-to by
27 counsel. *E.g., Laffitte*, 376 P.3d at 687–88 (“With regard to expenditure of judicial resources, we note
28 that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize

each claimed attorney-hour, but have instead used information on attorney time spent to ‘focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.’”) (citations omitted).

B. The Court should award 25% of the gross settlement fund as attorneys’ fees.

As stated above, plaintiffs seek an award of 25% of the \$11 million gross settlement fund, *i.e.*, \$2.75 million.

“As there is no definitive set of factors that California courts mandate or endorse for determining the reasonableness of attorneys’ fees in the context of a common-fund percentage-of-the-benefit approach, the Court [may] consider[] the reasonableness of the percentage request in light of the factors endorsed by the Ninth Circuit, with a 25% award as a starting point.” *Richardson v. THD At-Home Serv., Inc.*, 2016 WL 1366952, at *7 (E.D. Cal. Apr. 6, 2016).

The Ninth Circuit factors are as follows:

In assessing whether the percentage requested is fair and reasonable, courts generally consider the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of the work performed; (4) the contingent nature of the fee and the financial burden; and (5) the awards made in similar cases.

Destefano, 2016 WL 537946, at *17 (citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015); *Vizcaino*, 290 F.3d at 1047). Plaintiffs will now address these factors.

1. Results achieved

The results achieved for the class are the most significant factor to be considered as the Court considers whether a fee request is fair and reasonable. *Id.* (citations omitted). Here, after much investigation, research, and analysis; discovery; motions practice, including two fully briefed motions to dismiss, an important motion for reconsideration, and a motion for class certification; an in-person mediation session helmed by a well-respected retired federal judge, and several follow up discussions, plaintiffs, facing a determined opponent, achieved an \$11 million cash settlement for the Class. Plaintiffs’ hard-won settlement makes millions of dollars available for distribution to class members who otherwise would not have had the ability to wage a case on their own.

1 **2. The risk of litigation**

2 The foregoing results were obtained notwithstanding the significant legal odds captured by the
3 Court's orders on Google's motion to dismiss. (*See generally* Order Granting Motion to Dismiss with
4 Leave to Amend (Dkt. No. 66); Order Granting in Part and Denying in Part Motion to Dismiss Third
5 Amended Complaint (Dkt. No. 116).) Plaintiffs and their experienced counsel engaged in settlement
6 discussions after having undertaken much discovery beforehand. The Court's decisions on Google's
7 motions to dismiss provided further guidance to add to their careful analysis of the risks, as well as the
8 potential benefits of going forward with litigation.

9 Moreover, Google promised to continue to contest this case vigorously—a consideration not to
10 be taken lightly given its staunch defense of this case since its inception. Even so, it was only after
11 mediation with Judge Phillips (preceded by briefing on both sides), numerous discussions with Google's
12 counsel (aided by further writings), and several follow up conferences with Judge Phillips' colleague, Mr.
13 Lindstrom, that plaintiffs could agree to a settlement they considered reasonable under all the
14 circumstances. *See, e.g., LinkedIn*, 2016 WL 613255, at *15 (the defendant “contested its liability, and
15 intended to contest class certification as well,” such that the risk factors at issue “favor[ed] granting Class
16 Counsel's request” for fees). Here, while the Court certified a class, plaintiffs had to consider the risk
17 that Google would seek decertification of the class following summary judgment.

18 **3. Skill required and quality of the work performed**

19 As courts have recognized, the “prosecution and management of a complex national class action
20 requires unique legal skills and abilities.” *Destefano*, 2016 WL 537946, at *17 (citation omitted).

21 Counsel in this matter has litigated vigorously against one of the best-financed corporations in
22 the world, in a case involving complicated technical issues. The skill and efforts of Google's counsel
23 amplified the challenges, time, and effort necessary to prosecute plaintiffs' claims. Counsel also worked
24 closely with four named plaintiffs, including one from Canada. Along the way, plaintiffs faced complex
25 motions to dismiss, as well as intensive discovery efforts, both on the prosecuting and defending end of
26 the spectrum. They also faced an extensive response to their motion for class certification. These are
27 some of the challenges inherent in this sort of litigation that were referenced by the court in *Destefano*.

1 Yet plaintiffs, with the aid of counsel, prevailed as to several claims against Google's final motion
 2 to dismiss, won a critical motion for reconsideration, and prevailed in their efforts to see a class certified.
 3 And then class counsel managed complex settlement negotiations with Google, leading to the instant
 4 settlement.

5 The qualifications of class counsel and additional counsel are set forth in declarations submitted
 6 with this motion. (*See* Lopez Decl. ¶¶ 4-5 and Ex. B thereto; Declaration of Andrew S. Levetown
 7 (Levetown Decl.) Ex. A; Declaration of Mikki Barry (Barry Decl.) Ex. A; Declaration of Urminder
 8 Aulakh (Aulakh Decl.) Ex. A; Declaration of Simon Bahne Paris, Esq. in Support of Plaintiffs' Motion
 9 for an Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards (Paris Decl.) Ex.
 10 1.) Where, as here, counsel are highly experienced in class action litigation, shepherded this case
 11 through several key motions, have a record of success in this type of litigation, and faced high caliber
 12 opposing counsel throughout, this factor, too, "supports the fee award sought." *Destefano*, 2016 WL
 13 537946, at *17 (citations omitted).

14 **4. Contingent nature of the fee and the financial burden**

15 Further, plaintiffs' counsel undertook this matter on a contingent fee basis, with all of the
 16 financial risk that arrangement entailed, including the risk of no recovery. *See LinkedIn*, 2016 WL
 17 613255, at *15. Given the complexities, difficulties, and size of individual claims, which, unfortunately,
 18 made it difficult to engage representation, this case could not have gone forward except as a class action,
 19 with lawyers experienced in complex class actions to lead it. *See Destefano*, 2016 WL 537946, at *18.
 20 Courts have observed that "when counsel takes on a contingency fee case and the litigation is protracted,
 21 the risk of non-payment after years of litigation justifies a significant fee award." *Id.* (citation omitted).
 22 Here, this case has gone on since May 2014, such that class counsel have accrued significant lodestar,
 23 costs, and expenses along the way. *See id.* (describing a similar situation).

24 "Additionally, Class Counsel was, to an extent, precluded from taking and devoting resources to
 25 other cases or potential cases, with no guarantee that the time expended would result in any recovery or
 26 recoupment of costs." *LinkedIn*, 2016 WL 613255, at *15. "Thus, that Lead Counsel here have
 27 significant experience in this field and took on this matter on a contingent basis further indicates that the
 28 25 percent benchmark fee request is reasonable." *See Destefano*, 2016 WL 537946, at *18.

1 **5. Awards made in similar cases**

2 Finally, the 25% award sought here is similar to that awarded in other similar cases involving
 3 contract and commercial issues in a web/technology setting. For example, in *In re Google AdWords*
 4 *Litigation*, a case involving the advertiser side of Google’s advertising business, the court, pursuant to
 5 California law, recently awarded plaintiffs a fee at 27% of the common fund. Order Granting Mot. Final
 6 Approval of Class Action Settlement 11, *In re Google AdWords Litig.*, No. 5:08-cv-03369-EJD (N.D. Cal.
 7 Aug. 7, 2017), Dkt. No. 384. Plaintiffs there faced counsel led by Mr. Rhodes, as well. Other such cases
 8 saw fee awards at the 25% rate. *See, e.g., LinkedIn*, 2016 WL 613255, at *14-17 (25% award) (citing *In re*
 9 *Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1128, 1132 (N.D. Cal. 2015) (granting 25%
 10 benchmark attorney’s fees)); *Fraley v. Facebook, Inc.*, 2013 WL 4516806, at *3 (N.D. Cal. Aug. 26, 2013)
 11 (same); *In re Netflix Privacy Litig.*, 2013 WL 1120801, at *9-10 (N.D. Cal. Mar. 18, 2013) (same). This
 12 factor, too, supports the fee award sought by plaintiffs.

13 **C. Under a lodestar cross-check, plaintiffs’ attorneys’ fee request is fair and reasonable.**

14 If the Court chooses to perform a lodestar cross-check, which is discretionary, plaintiffs believe
 15 that it will confirm that the instant attorneys’ fees request is fair and reasonable. “The lodestar figure is
 16 calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation
 17 (as supported by adequate documentation) by a reasonable hourly rate for the region and for the
 18 experience of the lawyer.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)
 19 (citation omitted). “[T]he court may adjust it upward or downward by an appropriate positive or
 20 negative multiplier reflecting a host of ‘reasonableness’ factors, ‘including the quality of representation,
 21 the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of
 22 nonpayment.’” *Id.* at 941-42 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (citing
 23 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975))). Such factors, which are included in the
 24 so-called *Kerr* factors, many of which are “subsumed within the initial calculation of hours reasonably
 25 expended at a reasonable rate,” only warrant a departure from “the lodestar figure in ‘rare and
 26 exceptional cases.’” *Id.* at 942 n.7 (citations omitted). The *Kerr* factors themselves “largely subsume[]”
 27 California factors and are similar to state law factors, *Ackerman v. W. Elec. Co.*, 643 F. Supp. 836, 860-61
 28 (N.D. Cal. 1986), so plaintiffs discuss the *Kerr* factors below.

Here, 25% of the common fund represents a modest multiplier of 1.21 to the lodestar of plaintiffs' counsel. This multiplier is well within the range of multipliers awarded by California and Ninth Circuit courts. *E.g., Petersen*, 2016 WL 5719823, at *1 (awarding fees with a 1.12 multiplier, and noting that in *Vizcaino*, 290 F.3d at 1051-54, the Ninth Circuit upheld a 3.65 multiplier and stated that "the majority of fee awards in the district courts in the Ninth Circuit are 1.5 to 3 times higher than lodestar") (citation omitted).

1. Counsels' hourly rates are reasonable.

For purposes of the lodestar method, reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). "[T]he relevant community is the forum in which the district court sits." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). The rates applied should be in line with those commanded by lawyers of reasonably comparable skill, experience, and reputation. *Blum*, 465 U.S. at 895 n.11. Here, plaintiffs' class counsel attorneys have extensive experience in prosecuting complex litigation, including consumer class actions. (See Lopez Decl. ¶¶ 4-5 and Ex. B thereto.) So do plaintiffs' other attorneys. (See Levetown Decl. Ex. A; Aulakh Decl. Ex. A; Barry Decl. Ex. A; Paris Decl. Ex. 1.)

Declarations of counsel regarding prevailing fees in the community and rate determinations in other cases "are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The district court also may consider evidence of counsel's customary hourly rate. *See People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996) (holding that an attorney's actual billing rate for similar work is presumptively appropriate). Here, declarations from counsel provide such evidence. (See Lopez Decl. ¶¶ 6-7; see also Levetown Decl. ¶ 5; Barry Decl. ¶ 5; Aulakh Decl. ¶ 5; Paris Decl. ¶ 6.)

Counsel's declarations set forth their current professional and para-professional rates. This is so because courts generally apply each biller's current rates for all hours of work performed, regardless of when the work occurred, as a means of compensating for the deferred nature of counsel's work. *See, e.g., Fischel*, 307 F.3d at 1010; *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994).

Counsels' rates are reasonable and appropriate for complex, nationwide litigation conducted in the Northern District of California. For example, in the *In re Google AdWords Litigation* matter, the Court found reasonable "ranges for hourly rates" including "\$600 to \$900 for partners and 'of counsel' attorneys, \$350 to \$520 for associates and 'project attorneys,' \$350 for a law clerk, [and] \$190 to \$220 for paralegals." Order Granting Mot. Final Approval of Class Action Settlement, *supra*, at 12.

The hourly rates of the attorneys involved in this case compare favorably to those rates. And they fall within the range of other rates awarded by other courts in this judicial district. *See, e.g., Stuart v. RadioShack*, 2010 WL 3155645, at *6-7 (N.D. Cal. Aug 9, 2010) (approving 25% percentage-of-fund award with rates at and exceeding \$800 per hour, where average hourly rate was \$708); *G.F. v. Contra Costa Cty.*, 2015 WL 7571789, at *14 (N.D. Cal. Nov. 25, 2015) (referring to Bay Area litigation where rates "of between \$475-\$975 for partners, \$300-\$490 for associates, and \$150-\$430 for litigation support and paralegals" were found reasonable) (citation omitted); *see also* Lopez Decl. ¶ 7 (describing instances of rates approved in this judicial district at up to \$900 and \$975 per hour for attorneys and at up to \$170 per hour for para-professionals).

In their supporting declaration, Lopez Decl. ¶ 9 and Ex. C thereto, class counsel submit categorized summaries of time reasonably accrued (including by the other attorneys referenced in this brief), together with a chart showing time multiplied by counsels' hourly rates. *Cf. Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (concluding that a "summary of the time spent on a broad category of tasks such as pleadings and pretrial motions" met "basic requirement" of documentation). This chart is reproduced here:

Category	Timekeeper [†]	Hours	Rate	Total
Investigation/Research/ Preparation of Complaints ([†] For personnel roles, see Lopez Decl. Ex. C) (* Work performed by non- class-counsel attorneys)	Bede, Ashley	1.3	\$425.00	\$552.50
	Berman, Steve	6.5	\$975.00	\$6,337.50
	Fegan, Elizabeth	0.5	\$750.00	\$375.00
	Lopez, Robert	272.9	\$575.00	\$156,917.50
	Wojtanowicz, Garth	2	\$550.00	\$1,100.00
	Paris, Simon*	1.7	\$660.00	\$1,122.00
	Kocher, Charles*	17.3	\$535.00	\$9,255.50
	Levetown, Andrew*	62.0	\$450.00	\$27,900.00
	Barry, Miki*	94.0	\$250.00	\$23,500.00
	Aulakh, Urminder*	31.0	\$325.00	\$10,075.00

Total Investigate/Rsrch/Complaints		489.2		\$237,135.00
Case Management & Administration	Berman, Steve	3.5	\$975.00	\$3,412.50
	Conte, Jennifer	6.5	\$250.00	\$1,625.00
	Cornelius, Dawn	27.5	\$170.00	\$4,675.00
	Flexer, Carrie	2.2	\$250.00	\$550.00
	Garcia, Adrian	210.05	\$175.00	\$36,758.75
	Grueneich, Nicolle	38.4	\$200.00	\$7,680.00
	Haegele, Robert	2.4	\$200.00	\$480.00
	Heneghen, Rebecca L	85.9	\$170.00	\$14,603.00
	Lopez, Robert	90.3	\$575.00	\$51,922.50
	Miller, Brian	4.2	\$265.00	\$1,113.00
	Salonga, Joseph	238	\$200.00	\$47,600.00
	Su, Alexander Y	21.9	\$425.00	\$9,307.50
Total Case Management		730.85		\$179,727.25
Discovery	Gannon, Catherine	21.8	\$425.00	\$9,265.00
	Lopez, Robert	1282.1	\$575.00	\$737,207.50
	Matt, Sean	1	\$750.00	\$750.00
	Reynolds, Conor D	16	\$225.00	\$3,600.00
	Wojtanowicz, Garth	1.8	\$550.00	\$990.00
Total Discovery		1322.7		\$751,812.50
Motions	Bede, Ashley	0.9	\$425.00	\$382.50
	Berman, Steve	25.3	\$975.00	\$24,667.50
	Lopez, Robert	809.1	\$575.00	\$465,232.50
	Reynolds, Conor D	10	\$225.00	\$2,250.00
	Stevenson, Shayne	3.5	\$650.00	\$2,275.00
	Su, Alexander Y	22.5	\$425.00	\$9,562.50
	Wojtanowicz, Garth	2.1	\$550.00	\$1,155.00
Total Motions		873.4		\$505,525.00
Experts	Lopez, Robert	68.3	\$575.00	\$39,272.50
	Matt, Sean	1.5	\$750.00	\$1,125.00
	Spiegel, Craig	0.5	\$775.00	\$387.50
	Wojtanowicz, Garth	0.4	\$550.00	\$220.00
Total Experts		70.7		\$41,005.00
Settlement	Berman, Steve	22.5	\$975.00	\$21,937.50
	Lopez, Robert	244.6	\$575.00	\$140,645.00
	O'Hara, Chris	14	\$625.00	\$8,750.00
	Spiegel, Craig	1.5	\$775.00	\$1,162.50
Total Settlement		282.6		\$172,495.00
Settlement Approval	Lopez, Robert	172.5	\$575.00	\$99,187.50
	O'Hara, Chris	71	\$625.00	\$44,375.00
Total Settlement Approval		243.5		\$143,562.50
Class Certification	Berman, Steve	13.8	\$975.00	\$13,455.00
	Lopez, Robert	443.4	\$575.00	\$254,955.00
	Matt, Sean	1	\$750.00	\$750.00
	Spiegel, Craig	67	\$775.00	\$51,925.00
Total Class Certification		525.2		\$321,085.00
Grand Total		4538.15		\$2,352,347.25

Class counsel's reasonable rates, when multiplied by the number of hours expended on the tasks described in the immediately following section of this memorandum, and in counsel's supporting declaration, result in a reviewed, adjusted lodestar of \$2,280,494.75. (*See* Lopez Decl. ¶¶ 8-9 and Ex. C thereto.) Other counsels' rates, when multiplied by the number of hours expended on certain of the tasks summarized immediately below, and as set forth in their supporting declarations and captured on the chart submitted as Ex. C to the Lopez Decl., result in an additional lodestar of \$71,852.50. (*See* Levetown Decl. ¶ 5; Barry Decl. ¶ 5; Aulakh Decl. ¶ 5; Paris Decl. ¶ 5 and Ex. 2 thereto.) All told, counsels' fees total \$2,352,347.25.

2. The number of hours that counsel has worked, and will need to work, is reasonable.

The number of hours worked by class counsel to-date also is reasonable. (*See* Lopez Decl. ¶¶ 9-11 (summarizing reasonableness factors).) As discussed in the declarations of counsel submitted with this motion, *see* Lopez Decl. ¶¶ 10-25 and Ex. C thereto; *see also* Levetown Decl. ¶ 4; Barry Decl. ¶ 4; Aulakh Decl. ¶ 4; Paris Decl. ¶¶ 2, 4-5, reasonable and necessary work on this matter has included:

- a. **Investigation, research, and preparation of complaints:** Investigation and analysis of fact, legal, and technical issues pertaining to plaintiffs' claims; legal and factual research, including analysis of publicly available statements; extensive review and analysis of technical documents; and drafting of the initial and subsequent versions of the complaint.
- b. **Case management and administration:** Consultation with the named plaintiffs and members of the putative class throughout the pendency of the case; innumerable telephone conferences and emails with opposing counsel regarding case issues; communications with database staff re: our document repository; coordination among counsel and staff re: work assignments and needed projects and tasks; case management efforts with the Court; and coordination regarding assignments, time maintenance, and recordkeeping.
- c. **Discovery:** Work on initial disclosures and review and analysis of Googles' disclosures; interrogatories, requests for production, and requests for admission from plaintiffs to Google, and vice-versa; numerous depositions of parties and party representatives on both sides, including depositions of each side's consulting expert; document production and document review (including review and analysis of the voluminous materials produced by Google); and numerous conferences with Google.
- d. **Motions:** Research and drafting of the opposition to Googles' two motions to dismiss (including extensive analysis of Google's first motion to dismiss, which was mooted when plaintiffs responded with an amended complaint); preparation for, and oral argument, at the hearing on these motions; a motion (and pre-motion) for reconsideration regarding plaintiffs' liquidated-damages based theory; a motion regarding the protective order to be entered in this matter; review and

analysis of Google's motion to exclude international class members, and a motion asking that it be held in abeyance.

- e. **Experts:** Work pertaining to and with consulting experts, including the preparation of questions; deposition preparation and the defense of plaintiffs' consultant's deposition; preparation for the deposition of defendant's consultant; extensive document review and analysis in advance of the deposition of Google's consultant; the preparation of exhibits therefor, and the deposition of Google's consultant.
- f. **Class certification:** Research and drafting of motion for class certification, including plaintiffs' reply brief; work on motions to, and responses to motions to, seal; extensive factual and legal research and analysis re: Google's voluminous, extensive, detailed, and technical opposition papers; consultation with named plaintiffs regarding plaintiffs' opening papers and reply; work with plaintiffs regarding preparation of their supporting declarations; preparation of oral argument outline; preparation for hearing; attendance at hearing and argument; and analysis of the Court's decision, including follow-up legal and fact research, and expert consultation.
- g. **Settlement:** Consultation with the named plaintiffs regarding settlement issues; settlement negotiations and mediations, and the drafting of mediation briefing, as well as an in-person mediation with Judge Phillips and Mr. Lindstrom; continued and negotiations following the in-person mediation, with and without the aid of the mediator; drafting and analysis of term sheets; drafting and revision of further writings for use in negotiations; drafting and revision of settlement-related documents, including the first and amended settlement agreements; interviewing prospective settlement administrators; conferring with notice providers regarding a suitable notice program in this case; research regarding suitable potential *cy pres* recipients; working with the settlement administrator and Google on notice documents and the claim form; and continuing work with the settlement provider regarding notice and claims processing.
- h. **Settlement approval process:** Research for, and drafting of, the motion for preliminary approval and related papers; further negotiation and follow-up in response to the Court's requests regarding changes to the settlement agreement; working with Google on revisions to the settlement agreement; working with the four plaintiffs to prepare their declarations in support of the instant motion; and research toward, and drafting of, the instant motion.

Further, additional work remains to be performed. The final approval hearing is scheduled for October 17, 2018, and class counsel presently estimates that before then, they will need to work approximately 30 additional hours to answer questions posed by class members or the settlement administrator, to draft and file final approval papers, to review and analyze objections from class members and to draft responses to those objections as appropriate, and to prepare for argument. (Lopez Decl. ¶ 26.)

Beyond the final approval hearing, assuming final approval is granted, class counsel presently estimates an additional 30-40 hours of work will be necessary to attend to the issues that will arise during

administration of the settlement, to field inquiries from class members regarding the settlement and their claims and benefits, to work with Google as appropriate to address any class-member appeals or concerns under the settlement, and to work with Google and the settlement administrator as needed to determine the total value of claims against the net settlement funds available, among other activities, including potentially the preparation of filings with the Court in the possible (though unlikely) event that funds remain to be distributed to the two proposed *cy pres* recipients instead of to individual class members. (*Id.*) These are conservative projections; counsel could be required to spend much more time on any or all of these tasks, as matters develop.

3. Counsels' fees are reasonable pursuant to the *Kerr* factors subsumed in the lodestar analysis.

In considering the reasonableness of plaintiffs' lodestar figure, courts also may consider the quality of representation, the benefit obtained for the class, and the complexity and novelty of the issues presented, among other factors. *Bluetooth*, 654 F.3d at 941-42. Each of these factors supports plaintiffs' lodestar here.

(1) Novelty and complexity of the litigation

Given the foregoing history and lack of precedent on several issues; Google's many defenses and deep resources; and questions regarding individual issues, this case was novel and complex. (*See Lopez Decl.* ¶ 27.)

(2) Skill and experience of class counsel and quality of representation

The "prosecution and management of a complex national class action requires unique legal skills and abilities." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005). The courts consider counsel's skill alongside the quality of work performed by counsel. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007). In this case, success required experienced and skilled class-action attorneys. As attested in the declarations cited above, class counsel are members of the bar with extensive experience in consumer class-action litigation, which they utilized to obtain the best recovery for the class.

The Court also should consider the quality of opposing counsel in evaluating the quality of class counsel's work. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *20. Class counsel faced renowned and

highly skilled defense attorneys in this matter, with well-deserved reputations for vigorous advocacy in the defense of their clients, including Google. *See id.*

(3) Favorability of result

In a case with numerous legal and technical complexities, and facing a determined, well-financed, and well-represented defendant, plaintiffs and their counsel were able to achieve a settlement including an \$11 million cash component and significant non-monetary relief. This result was genuinely favorable to the class, the vast majority of whose members, given practical realities, truly needed dedicated counsel to advocate for them in a class setting. (*See, e.g.,* Lopez Decl. ¶ 28.)

4. The presence of a modest multiplier further supports the reasonableness of plaintiffs' fee request.

Furthermore, plaintiffs seek only a modest multiplier to reach the 25% of the common fund they seek. Lodestar is presently at \$2,280,494.75 for class counsel, such that the multiplier is 1.21. If one considers lodestar reported by other plaintiffs' counsel, at \$71,852.50, and includes it in the calculus, the multiplier drops further, to 1.17. The presence of these modest multipliers further supports the reasonableness of plaintiffs' request. *Williams v. SuperShuttle Int'l Inc.*, 2015 WL 685994, at *2 (N.D. Cal. Feb. 12, 2015).

D. Costs and expenses

The settlement agreement also provides for the recovery of costs and expenses. (Lopez Decl. Ex. A, ¶ 8.1.)

Class counsel and other plaintiffs' counsel have incurred costs and expenses in the amount of \$117,320.72. However, they limit their request to \$116,045, which is the amount they gave as an approximation in the long form-notice. These costs and expenses are set forth in the declarations of counsel submitted with this motion, and class counsel's chart is reproduced here. (*See* Lopez Decl. ¶ 29 and Ex. D thereto; Paris Decl. ¶ 7 and Ex. 3 thereto.)

Expense Category	Total
10 – Airfare	\$7,062.97
15 – Printing/Copies	\$18,987.50
18 – Depositions/Court Reporters	\$12,802.23
20 – Miscellaneous	\$43.83
35 – Copy	\$238.19

40 – Expert Fees	\$22,725.00
50 – Overnight Shipping	\$1,365.28
52 – Filing Fees	\$400.00
53 – Hotel	\$5,127.14
55 – Online Services/Legal Research	\$26,418.04
59 – Meals	\$1,054.75
60 – Messenger/Process Services	\$4,591.27
61 – Mediation	\$11,112.50
70 – Transportation/Travel Expenses	\$1,848.20
71 – Parking	\$415.13
72 – Court Fees	\$610.00
76 – Public Relations/Marketing	\$1,900.80
90 – Telephone	\$7.89
Saltz Mongeluzzi Barrett & Bendesky costs	\$610.00
Grand Total	\$117,320.72

Class counsel anticipates that they may expend more on behalf of the settlement class before the close of this matter, but the sums are unclear at this time.

All expenses that are typically billed by attorneys to paying clients in the marketplace are compensable. *See Missouri v. Jenkins*, 491 U.S. 274, 286 (1989); *accord Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010); *see also Omnivision*, 559 F. Supp. 2d at 1048 (“[a]ttorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters”). As detailed in the declarations of counsel, plaintiffs incurred substantial costs on court reporters, travel (including to numerous hearings, deposition, and a California mediation), consulting expert fees, computer-aided research, photocopies, postage, court fees, and telephone charges. These costs were necessarily and reasonably incurred to bring this case to a successful outcome.

E. The class representatives each should receive \$5,000 incentive awards.

Finally, plaintiffs seek service awards to the long-serving named plaintiffs in this matter, as contemplated by the settlement agreement. (*See* Lopez Decl. Ex. A, ¶¶ 9.1-9.3.) “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (2009) (citing 4 ALBA CONTE ET AL., NEWBERG ON CLASS ACTIONS § 11:38 (4th ed. 2008)). These awards, generally sought after a settlement has been reached, “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Id.* at 958-59. The Court has discretion

1 to approve incentive awards, and its consideration includes factors such as the amount of time and effort
 2 spent by the class representatives, the duration of the litigation, and the personal benefit (or lack thereof)
 3 enjoyed by the class representatives as a result of the litigation. *Wilson v. Airborne, Inc.*, 2008 WL
 4 3854963, at *12 (C.D. Cal. Aug. 13, 2008).

5 Broadly speaking, the named plaintiffs have assisted counsel with counsel's investigation,
 6 analysis, and prosecution of their potential and actual claims; the preparation of pleadings (including the
 7 complaints filed in this matter and declarations); settlement negotiations and considerations; and review
 8 and analysis of the parties' settlement papers. (Lopez Decl. ¶ 3.) They also have monitored this case on
 9 behalf of their fellow putative class members. (*Id.*) Greater specifics, and including as to time spent on
 10 this case on behalf of settlement class members, are included in the named-plaintiff declarations
 11 submitted with this motion. (*See* Pettitt Decl. ¶ 5; Clark Decl. ¶ 5; Chose Decl. ¶ 5; Simpson Decl. ¶ 5.)
 12 As attested in their declarations, time spent on this case has meant time spent away from family (and a
 13 stressed relationship), friends, work, business endeavors, and various other activities. (*See* Pettitt Decl.
 14 ¶ 6; Clark Decl. ¶ 6; Chose Decl. ¶ 6; Simpson Decl. ¶ 6.) It also affected the health of at least one of
 15 the named plaintiffs, who nonetheless soldiered on. (Simpson Decl. ¶ 6.)

16 \$5,000 service awards are presumptively reasonable in this judicial district. *See, e.g., Camberis v.*
 17 *Ocwen Loan Serv. LLC*, 2015 WL 7995534, at *3 (N.D. Cal. Dec. 7, 2015) ("As this Court has recognized,
 18 . . . as a general matter, \$5,000 is a reasonable amount [for service awards].") (citation and internal
 19 quotations omitted). This is so even in cases when there is the prospect of small recoveries by individual
 20 settlement class members. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947-48 (approving
 21 \$5,000 incentive awards where class members would receive \$12); *Weeks v. Kellogg Co.*, 2013 WL 6531177,
 22 *3, 34-37 (C.D. Cal. Nov. 23, 2013) (approving incentive awards of \$5,000 per named plaintiff, where
 23 settlement provided for the recovery by class members of \$5 per box of cereal purchased during the
 24 class period, up to a maximum of \$15 per class member, all subject to proportional reduction if all
 25 eligible claims exceeded the settlement fund); *see also Wren v. RGIS Inventory Specialists*, 2011 WL 1230826,
 26 at *31-37 (N.D. Cal. Apr. 1, 2011) (making \$5,000 service awards to 20 named plaintiffs "where average
 27 award to class members was \$207.69"). Also, the awards sought here are modest compared with
 28 incentive awards in other cases. *See, e.g., Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, at *9 (S.D.

1 Cal. June 1, 2010) (\$25,000 award); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001)
 2 (\$300,000 award).

3 In this case, given the valuable and time-consuming aid rendered to the settlement class by each
 4 of the named plaintiffs in this long-running, complex case, plaintiffs respectfully submit that the
 5 requested awards are fair and reasonable, and that they ought to be awarded.

6 V. CONCLUSION

7 For all of the foregoing reasons, plaintiffs respectfully ask that the Court grant the foregoing
 8 requests for reasonable service awards, attorneys' fees, costs, and expenses.

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